



SEP 11 1940

CHARLES ELMORE CROPLEY  
CLERK

**SUPREME COURT OF THE UNITED  
STATES**

\_\_\_\_\_  
OCTOBER TERM, 1940.

\_\_\_\_\_  
**No. 197.**  
\_\_\_\_\_

GEORGE W. CASHMAN, PETITIONER,

VS.

THE MARSHALL'S U. S. AUTO SUPPLY, INC.,  
RESPONDENT.

\_\_\_\_\_  
**Upon Petition for Writ of Certiorari.**  
\_\_\_\_\_

**REPLY BRIEF OF PETITIONER.**  
\_\_\_\_\_

CHARLES ROONEY,

ROY N. McCUE,

RANDAL C. HARVEY,

All of Topeka, Kansas,

*Counsel for Petitioner.*

=====



**SUPREME COURT OF THE UNITED  
STATES**

---

OCTOBER TERM, 1940.

---

**No. 197.**

---

GEORGE W. CASHMAN, PETITIONER,

VS.

THE MARSHALL'S U. S. AUTO SUPPLY, INC.,  
RESPONDENT.

---

**Upon Petition for Writ of Certiorari.**

---

**REPLY BRIEF OF PETITIONER.**

In the brief of respondent in opposition to petition for writ of certiorari, counsel continuously state that the plaintiff (petitioner) made no showing of any kind, except the affidavit of Robert Bannerman (R. 43), in support of the motion for new trial which was granted by the trial court.

If counsel mean that no further evidence was introduced, this statement is correct. However, the implication of the language of respondent's brief is to the effect that the court granted the motion without any argument, and practically without a hearing. If such implication is intended, it is entirely incorrect. The record correctly shows (R. 44) that the motion was duly argued to the court on March 25, 1939. While no record was made of this argument, counsel discussed fully the questions of

122613

fact and law raised by the motion, and particularly urged that the evidence upon which the verdict was based was false, and not entitled to credit. The affidavit of Robert Bannerman was also presented, and counsel discussed its effect upon the evidence which had been offered at the trial. Counsel for plaintiff who participated in such hearing do not recall that counsel for respondent made any objection to such affidavit, and certainly counsel caused no record to be made of any such objection, either at the time of such hearing or at any other time, and the printed record shows no such objection.

Our position is fully set out in the petition and brief heretofore filed, and this reply brief is filed only to correct the implication from the language of respondent's brief.

Respectfully submitted,

CHARLES ROONEY,  
ROY N. McCUE,  
RANDAL C. HARVEY,

All of Topeka, Kansas,  
*Counsel for Petitioner.*

